IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5931 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIWALIBEN WD/O MAFATBHAI SHIVABHAI PRAJAPATI

Versus

COMPETENT AUTHORITY AND DY.COLLECTOR

Appearance:

MR DC DAVE for Petitioners

MS SD TALATI AGP for Respondent No. 1

MR NV ANJARIA for Respondent No. 3 to 43

MR KB ANANDJIWALA for Respondent No. 40 ?

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/02/2001

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioners before this Court are the owners of land bearing survey no. 230, admeasuring 2 Hec. 22 Are-53 sq.m, situated at village Gotta, Taluka-District Ahmedabad City. Of the said land parcel of land admeasuring 2222 sq. mtrs. was declared to be excess vacant land under the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as, `the Act'] by the competent authority under its order dated 1st August, 1990. Feeling aggrieved, the petitioners preferred appeal before the Urban Land Tribunal, which was dismissed on 30th November, 1991. Pending the said appeal, the petitioners had applied for exemption under section 20 (1) of the Act. By communication dated 23rd June, 1998, the petitioners were called upon to remain present for determination of amount of compensation payable to the petitioners under the Act. Feeling aggrieved, the petitioners have preferred the present petition. Pending this petition, the petitioners have also challenged the validity of Notification dated 17th February, 1991 issued under section 10 (3) of the Act and published in the Government Gazette on 5th March, 1992.

3. Mr. Dave has submitted that the identity of the excess vacant land is not established. The land which is alleged to have been taken over by the State Government did not belong to the petitioners and the land which belonged to the petitioners and declared to be `excess' vacant land is still in the possession of the petitioners. He has further contended that inspite of the dismissal of the appeal preferred by the petitioners, so long as the petitioners' application for exemption under section 20 (1) of the Act was pending, the State Government could not have taken further steps towards acquisition of land under the Act. He has strenuously urged that till this date, the application for exemption made on 24th January, 1991 has not been decided. He has further submitted that the land in question was agricultural land situated within the `agricultural zone'. The land was, therefore, excluded from the preview of the Act and could not have been held to be `excess vacant land' under the Act. In support of his contentions, he has relied upon the judgments of this Court in the matters of M/s. Avanti Organisation v. Competent Authority & Additional Collector, Urban Land Ceiling Act, Rajkot & Anr., {1989 (1) GLR 586}; of Samrathben Manilal Chokshi & Anr. v. State of Gujarat & Anr., {1994 (1) GLR 203}; of Savitaben Ramanbhai Patel v. State of Gujarat & Ors., {1999 (1) GLH 100} and of Maneklal Mulchandbhai Patel & Ors. v. The Competent Authority & Additional Collector & Anr., [1995 (1) GLH 153]. He has also relied upon the judgment of the

Hon'ble Supreme Court in the matter of Smt. Atia Mohammadi Begum v. State of U.P & Ors., [AIR 1993 SC 2465].

Learned AGP Ms. Talati has produced the records of the matter for perusal by the Court and has stated that after the land having been declared `surplus' on 9th August, 1990, the Notification under section 10 (3) of the Act was issued on 17th February, 1991 and the same was published in the Government Gazette on 5th March, 1992 i.e., after the Tribunal dismissed the appeal preferred by the petitioners on 30th November, 1991. Since then, the possession of the surplus land was assumed on 3rd March, 1997. Thus, the land in question has vested in the Government, absolutely and free from all encumbrances. She has also submitted that since the acquisition of the land, the same has been plotted into each plot admeasuring 25 sq.meters. The said plots have been allocated to the weaker section of the society belonging to the Scheduled Caste. The respondents nos. 3 to 42 are the persons to whom the said plots have been allotted.

In above view of the matter, the land in question having been vested in the Government absolutely, free from all encumbrances, challenge to the order made by the competent authority and confirmed by the Tribunal has become academic. In no circumstances, the land which has vested in the Government under section 10 (3) of the Act, the possession has been taken over and which has been allotted to the third parties can be restored to the petitioners. Besides, the challenge made in the year 1998 is grossly belated and requires to be rejected on that ground also.

The contention that pending application for exemption under section 20 (1) of the Act, the Government could not have proceeded further to assume the possession of the land in question, also requires to be rejected. It is true that law settled is that pending such application, the State Government should stay its hands and should not assume the possession of the land in question. However, in the present case, as stated hereinabove, the possession has already been assumed on 3rd March, 1997. The petitioners do not appear to have persued their application for exemption made as far back as in the month of January, 1991. The petitioners who have remained indolent and have failed to persue their application and have remained silent spectators to the proceedings under the Act proceeding further so as to create right of third parties cannot be granted relief as

prayed for. In the present set of facts, even the judgement of the Hon'ble Supreme Court in the matter of Smt. Atia Mohammadi Begum v. State of U.P & Ors. [Supra] cannot be of help to the petitioners inasmuch as the third party rights have been created and the wheels of law cannot be put into reverse motion. As regards the identity of land, I must say that the same is a disputed question of fact and cannot be decided in a petition under Art. 226 of the Constitution of India.

Mr. Dave has also submitted that the possession of the land in question is still with the petitioners and in view of the provisions contained in the Urban Land [Ceiling] {Repeal} Act, 1999; adopted by the State of Gujarat with effect from 30th March, 1999, the orders of the Competent Authority and the Urban Land Tribunal shall stand abated. I am afraid, I cannot agree with this contention either. As I have recorded hereinabove, the possession of the land in question was assumed by the State Government on 3rd March, 1997 and in view of section 3 of the Repeal Act, 1999, the said Act shall not apply to the present case.

No other contention is raised before me. The petition is dismissed. Notice is discharged.

[R.M Doshit, J.]

Prakash*